



Department of Transformation and Shared Services

Governor Sarah Huckabee Sanders

Secretary Leslie Fiskens

October 26, 2023

Mr. Marc Oudin
7000 Jefferson Parkway, Suite D
White Hall, Arkansas 71602

RE: Advisory Opinion No. 2023-13

Dear Mr. Oudin:

This letter is in response to a written request for an advisory opinion and a waiver pursuant to Arkansas Code Annotated §19-11-715(b) and (c), which was sent to me in a letter dated October 17, 2023, regarding a proposed fourth lease amendment for property located at 3450 West 34th Street, Pine Bluff, Arkansas.

This opinion is based upon the following information that you have presented to me and upon which I am relying. It should be noted that if one or more of these information items are later shown to be incorrect, that could result in a revised opinion.

1. Since January 27, 2017, L. Don Richey has leased property to The Board of Trustees of the University of Arkansas acting for and on behalf of the University of Arkansas for Medical Sciences – College of Medicine – Department of Pediatrics – Kids First;
2. The lease has been amended on March 7, 2019, May 13, 2021, and July 19, 2023;
3. On September 5, 2023, Oudin Property, LLC (Oudin Property) purchased the property from Mr. Richey;
4. You are the sole owner of Oudin Property;
5. For approximately, 12 years, you have served as an appointed trustee on the Board of Trustees for Southeast Arkansas College (SEARK), which is a public community college in Pine Bluff, Arkansas;
6. If any issues arise relating to UAMS or Kids First, you can recuse from the discussion and any resultant action taken by the Board of Trustees;
7. The terms of the proposed Fourth Lease Amendment remain the same as the terms of the Third Lease Amendment negotiated with Mr. Richey; and
8. The Fourth Lease Amendment reflects the change in ownership and address change.

I. Relevant Law

Arkansas Code Annotated § 19-11-701(8) defines “employee,” as “an individual drawing a salary from a state agency, whether elected or not, and any non-salaried individual performing personal services for any state agency.” “State agency” is defined in Arkansas Code Annotated § 19-11-701(16) as meaning “any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.”

Office of the Secretary

501 Woodlane Street, Suite 201 * Little Rock, AR 72201 * 501.319.6551

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Arkansas Code Annotated § 19-11-701(2) defines “business” to mean “any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity.” The term “financial interest” is defined in Ark. Code Ann. §19-11-701(9) as meaning:

- (A) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;
- (B) Ownership of more than a five percent (5%) interest in any business; or
- (C) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;

The ethical strictures set forth in Arkansas Code Annotated § 19-11-705(a)(1)(A) prohibit state employees from participating directly or indirectly in any particular matter pertaining to any state agency contracts in which an employee or an employee's immediate family member has a financial interest. *See* Arkansas Code Annotated § 19-11-705. Arkansas Code Annotated § 19-11-705(a)(2) defines “direct or indirect participation” as including, but not being limited to, “involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.”

II. Analysis

Based on the above representations, your appointment as trustee on the Board of Trustees of SEARK classifies you as a state employee, and your ownership through Oudin Property of the leased property establishes that you have a financial interest in a proposed lease amendment to a state contract.

In support of your request, you have stated that Oudin Property purchased the property at issue on September 5, 2023, and the documentation reflects that the Third Lease Amendment was executed on July 19, 2023, which preceded your ownership of the property. As the proposed Fourth Lease Amendment contains the same substantive provisions as those negotiated with Mr. Richey in the Third Lease Amendment, I am persuaded that the circumstances demonstrate that a conflict is insubstantial or remote so as not to taint the procurement process in this case.

You have also affirmatively represented that you will recuse as a SEARK trustee from any discussion or action involving the lease, UAMS, or Kids First, which will address any actual or appearance of impropriety.

III. Decision

Thank you for seeking my counsel and approaching the issue with transparency. I am persuaded that under the representations as stated above, any ethical conflict that might exist is insubstantial or remote, and I grant permission to proceed to such extent and upon such terms and conditions as specified in this letter. If a renewal of the lease agreement with Oudin Property is pursued in which the substantive terms are revised, then a waiver request must be submitted in accordance with the ethical provisions. This decision grants a waiver in the interests of the state and in accordance with Arkansas Code Annotated § 19-11-715(c); compliance with the above course of conduct is deemed to constitute compliance with the ethical standards of the Arkansas Code Annotated § 19-11-701 *et seq.*

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Sincerely,

Leslie Fisk

Leslie Fisk
Secretary

Signature: *Leslie Fisk*
Leslie Fisk (Oct 26, 2023 09:22 CDT)

Email: leslie.fisk@arkansas.gov

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Final Audit Report

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